S.B. CIVIL WRIT PETITION NO.2016/2005

Gulab Devi and ors. Vs. State of Raj. and others.

Date : 7.4.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Varun Goyal, for the petitioners.

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Heard learned counsel for the petitioners.

The petitioners are aggrieved against the orders dated 5.11.1997 and 16.2.2005 passed by the Additional Divisional Commissioner, Jaipur and Board of Revenue respectively.

According to learned counsel for the petitioners, the land in question was sold by a sale deed dated 28.6.1985 and on the basis of sale deed, the application for mutation was submitted but the same was rejected by Naib Tehsildar vide order dated 17.11.1985 against which the appeal was preferred which too was dismissed by the S.D.O., Kishangarhbas by order dated 22.11.1988. However, the Additional Divisional Commissioner allowed the second appeal and directed that mutation be opened in the name of respondent Laxmi Devi by order dated 5.11.1997. The petitioners preferred revision petition before the Board of Revenue which was dismissed on 16.2.2005.

According to learned counsel for the petitioners, the

petitioners submitted an application before the Board of Revenue for taking on record certain documents and that was not considered and dismissed by the Board of Revenue. It is also submitted that the Additional Divisional Commission without condoning the delay in filing the appeal of respondents, allowed the same. It is also submitted that on merits, there is a strong case in favour of the petitioners and that has not been appreciated by the courts below. Apart from that, the petitioner has filed revenue suit for declaration of their rights and during pendency of that litigation, no revenue entry should have been permitted to be changed in view of number of decisions of the Board of Revenue.

I have considered the submissions of learned counsel for the petitioners.

It is true that the entries in the revenue record should not be changed when the regular suit is pending. In this case, when the petitioners have also filed the revenue suit for declaration and mere change of the entry in the revenue record though may be in pursuance of the order of Board of Revenue but in mutation proceedings, cannot affect right, title or interest of the petitioners in the property in dispute during the pendency of the suit. Even after mutation proceedings attaining finality, even than the decree passed in regular suit decides the right, title and interest of the parties to suit and the decree passed in that suit is required to be followed by the revenue

authorities for the purpose of keeping the revenue entries in the revenue record. Even if any change has been carried out in pursuance of the order passed in mutation proceedings and which has been upheld by the Board of Revenue, even than that change in revenue record is required to be corrected according to the decision in regular suit.

Therefore, simply because the Additional Divisional Commissioner as well as Board of Revenue without appreciating this aspect of the matter allowed the change in the revenue entry, this Court is not inclined to interfere in the order simply because of the reason that that entry itself will be a entry in the revenue record without affecting any right, title or interest of the petitioners in the land in dispute and the revenue court in regular suit can very well examine the matter with respect to any of the relief in the nature of including interim measure by even taking a different view than the view as taken in the fiscal proceedings on the basis of the material available on the record and after satisfying itself.

Learned counsel for the petitioners also raised apprehension that by correction of entry, other party may have a march over the petitioner and he may take benefit of entry for the purpose of sale.

Prima-facie this submission of learned counsel for the

petitioner appears to be attractive but it is settled position of law that no property can be dealt with when the litigation is pending before the Court between the parties and in view of the law reiterated in several judgments that it will not create any benefit in favour of the person who obtain the change in position during pendency of suit as it will be in violation of principle of lis-pendent. It is also settled law that even the decree passed in absence of the transferee who purchased the property during the pendency of litigation is binding upon the subsequent transferee.

Apart from the above, the petitioners are free to take appropriate steps and may obtain appropriate orders from the revenue courts also, therefore, there appears to be no reason for this Court to exercise the power under Article 227 of the Constitution of India in such a matter where there will be need of going into very many factual aspect about sale, right, title and furthermore about possession of the property.

With the aforesaid observations, this writ petition is disposed of.

(PRAKASH TATIA), J.

S.Phophaliya